IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1050 OF 2005
IN
NOTICE OF MOTION NO.3159 OF 2005
IN
SUIT NO.2842 OF 2005

Binoy Janak Maniar — Appellant
vs.
Smt.Beena Manek Mehta — Respondent

Mr.D.H.Mehta i/b.Mr.N.H.Pathak for the appellant.

Mr.V.R.Dhond with Mr.Sandip Parekh & Mr. A.S.Doctor i/b.M/s.India Law Alliance for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 6th December 2005

P.C.

Heard.

2. Admit.

3. M/s.India Law Alliance waives service for the respondent.

4. By consent the appeal is heard finally at this stage.

5. Having considered the matter thoughtfully, we are of the view that there is no justification in appointing the Court Receiver in respect of the suit flat by way of an ad-interim order. It is not in dispute that the

present defendant (appellant herein) had filed a Suit for specific performance of the contract relating to the flat which is subject matter of the present Suit for possession. The said Suit for specific performance was filed by the present appellant in the year 2001. It is his case that suit flat was agreed to be sold by the plaintiff (respondent herein). In the circumstances, we hardly find any justification for appointment of Court Receiver. The order of temporary injunction restraining the defendant (appellant herein) from alienating, encumbering or disposing of and/or creating any third party rights or part with possession of suit flat shall meet the ends of justice.

6. Resultantly, we set aside the order dated 21.10.2005. However, ad-interim order in terms of prayer (d) shall remain operative until disposal of notice of motion.

7. We clarify that the observations made by us are only prima facie for consideration of appeal arising out of an ad-interim relief and shall have no bearing in the consideration of notice of motion on its merits.

(R.M.LODHA, J.)

(D. G. KARNIK, J.)